IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE M.H.S. ANSARI**

**and**
**THE HON'BLE MR JUSTICE T.CH.SURYA RAO**

**WRIT PETITION NO : 19270 of 2004**

Between:

Smt.K.Lakshmi Kantam, W/o.Lt.K.Gopala Krishnaiah,
Dr.No.33-23-11, Krishna Rao Street, Kasturibaipeta, Vijayawada,
Krishna District.

**.... PETITIONER**

AND

The Deputy Commercial Tax officer, Seetharampuram Circle, Vijayawada, Krishna District.

**...RESPONDENT**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction particularly in the nature of writ of Mandamus declaring the action of the respondent herein in issuing Form-IV notice dt.11-10-2004 under section-25 of the Revenue Recovery Act, 1864 demanding me to pay the amount as mentioned therein alleged to be from M/s.Sri Balaji Wines, Gandhinagar, vijayawada and further to attach the residential building with Dr. No.33-23-11, Krishnarao Street, Kasturibaipeta, Vijayawada as illegal arbitrary, unjust improper, without authority of law and without jurisdiction and violative of principles of natural justice and ultra vires the provisions of the APGST Act, 1957 in addition to being violative of Articles-14 and 265 of the Constitution of India and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

**Counsel for the Petitioner:MR.M.V.J.K.KUMAR**

**Counsel for the Respondent: GP FOR COMMERCIAL TAX**

**The Court made the following :**

-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-
-

**ORDER:** ***(Per Hon'ble Sri Justice M.H.S.Ansari)***

Petitioner in the instant writ petition has questioned Form-IV notice dated 11.10.2004 issued under Section 25 of the Revenue Recovery Act, 1864 demanding payment of the amount specified therein due by late Koganti Gopala Krishnaiah, partner of M/s. Sri Balaji Wines, Gandhi Nagar, for the assessment years 1982-83 to 1985-86. It is the contention of the petitioner that she has no knowledge about the partnership firm as she is a housewife and she also does not know about the transactions, as she was not a partner of the said firm. It is however, not disputed by her that she is the wife of late K.Gopala Krishnaiah, who was partner in M/s. Sri Balaji Wines, Gandhi Nagar, Vijayawada.

2. Learned counsel for the petitioner contended that as the impugned notice of demand has been issued to the petitioner, the same is illegal and void as no demand can be made on the legal representative of a dealer and there are no such provisions under the A.P.G.S.T Act, which enable the department to recover taxes due to a deceased dealer from his legal representatives. Further contentions have also been raised with regard to ownership of the property in house bearing Door No.33-23-11, Krishnarao Street, Kasturibaipeta, Vijayawada, which was proposed to be attached by the impugned notice in Form-IV. We do not consider it necessary to refer to the contentions with respect to the ownership, title or possession with respect to the said property bearing Door Number 33-23-11.

3. A counter affidavit has been filed on behalf of the respondent/tax authorities affirmed by the Deputy Commercial Tax Officer. Therein, it is *inter alia* stated that that late Sri Gopala Krishnaiah was the managing partner of the firm in question, and at the time of obtaining registration certificate under the A.P.G.S.T. Act, he furnished his house bearing municipal door No.33-23-11, Krishnarao Street, Kasturbaipeta as security and furnished an undertaking on a non judicial stamp paper to the effect that he would not alienate the said property in favour of any third party or among his relatives and the department would be at liberty to attach the said immovable property for realization of any outstanding sales tax dues in respect of the said firm. It is further stated that the assessment arrears in question have been made in pursuance of the orders of the High Court in T.R.C.15 of 1996 and 21 of 1996 resulting in demand of Rs.23,72,749/-. The said outstanding demand could not be recovered from the partnership firm. A notice in Form IV impugned in the instant writ petition has been issued for recovery of the out standing tax from the property furnished as security by the said deceased managing partner late Sri K.Gopala Krishanaiah. Several other contentions have also been raised sustaining the issuance of demand notice.

4. A perusal of the impugned demand notice, which is issued in Form IV would show that the same is under Section 25 of the Revenue Recovery Act. The said notice specifically states that the sales tax arrears due by late Sri K.Gopala Krishnaiah, partner of M/s. Balaji Wines for the assessment years in question are sought to be recovered, and notice is issued to the petitioner as the holder of the building bearing Door No.33-23-11. She was called upon to pay the amount within 10 days.

5. Under Section 25 of the Revenue Recovery Act, a demand notice is required to be served prior to attachment of the land. The mode of service has been provided in the said section 25. It is postulated that a written demand shall be caused to be served upon the defaulter, the estate or land in respect of which it is claimed when the recovery is sought to be made by the attachment of the land or building of the defaulter. As in the instant case, the notice in Form IV issued under Section 25 states that petitioner is called upon as the holder of the building bearing Door No.33-23-11, we find that the said notice does not suffer for want of jurisdiction. Whether the said property which is sought to be proceeded against for recovery of tax dues belongs to the petitioner or that she has no concern with the same are matters which can appropriately be considered if objections to the same are raised before the authority concerned.

6. Accordingly, we are not inclined to interfere with the impugned demand notice issued in terms of Section 25 of Revenue Recovery Act prior to attachment of the property proposed to be proceeded against, for recovery of the tax arrears. It shall be open to the petitioner to submit her objections before the sole respondent, and if such objections are filed within four weeks from the date of this order, same shall be taken on record and disposed of in accordance with law. Until such time, as objections by the petitioner, if filed within the time stipulated above are disposed of, no further proceedings shall be taken pursuant to the impugned demand notice. Thereafter, it shall be open to the respondent authorities to proceed in accordance with law.

7. The writ petition accordingly stands disposed of. No order as to costs.

_____

**M.H.S.ANSARI, J**

_____

**T.CH.SURYA RAO, J**

Dated: 21.02.2005

Note: Issue C.C on priority basis

(B/o)

RAR

To

The Deputy Commercial Tax officer, Seetharampuram Circle, Vijayawada, Krishna District.

2) 2 CCS to G.P for Commercial Tax, High Court Buildings, Hyd. (OUT)

3) 2 CD copies